

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, April 30, 2003, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Jon Carlson, Steve Duvall, Gerry Krieser, Roger Larson, Patte Newman, Greg Schwinn, Cecil Steward, Mary Bills-Strand and Tommy Taylor; Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Tom Cajka, Becky Horner, Greg Czaplewski, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair Greg Schwinn called the meeting to order and requested a motion approving the minutes of the meeting held April 16, 2003. Newman moved to approve the minutes, seconded by Bills-Strand and carried 8-0: Carlson, Krieser, Larson, Newman, Schwinn, Steward, Bills-Strand and Taylor voting 'yes'; Duvall abstaining.

### **CONSENT AGENDA**

**PUBLIC HEARING AND ADMINISTRATIVE ACTION:** April 30, 2003

Members present: Krieser, Taylor, Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3403; CHANGE OF ZONE NO. 3404; CHANGE OF ZONE NO. 3405; MISCELLANEOUS NO. 03002; MISCELLANEOUS NO. 03003; SPECIAL PERMIT NO. 846B; SPECIAL PERMIT NO. 2007; SPECIAL PERMIT NO. 2008; SPECIAL PERMIT NO. 2009; SPECIAL PERMIT NO. 2011; WAIVER NO. 03006; FINAL PLAT NO. 02012, MECHLING'S WILDERNESS PARK ESTATES; FINAL PLAT NO. 02045, HARTLAND HOMES SOUTHWEST 1<sup>ST</sup> ADDITION; and FINAL PLAT NO. 02049, VINTAGE HEIGHTS 14<sup>TH</sup> ADDITION.**

Item No. 1.3a, Change of Zone No. 3405; Item No. 1.3b, Miscellaneous No. 03002; Item No. 1.3c, Miscellaneous No. 03003; and Item No. 1.7, Special Permit No. 2009, were removed from the Consent Agenda and scheduled for separate public hearing.

Steward moved to approve the remaining Consent Agenda, seconded by Newman and carried 9-0: Carlson, Duvall, Krieser, Larson, Newman, Schwinn, Steward, Bills-Strand and Taylor voting 'yes'.

Note: This is final action on Special Permit No. 846B, the Mechling's Wilderness Park Estates Final Plat No. 02012, the Hartland Homes Southwest 1<sup>st</sup> Addition Final Plat No. 02045 and the Vintage Heights 14<sup>th</sup> Addition Final Plat No. 02049, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**CHANGE OF ZONE NO. 3405,**  
**MISCELLANEOUS NO. 03002**  
**and MISCELLANEOUS NO. 03003,**  
**TEXT AMENDMENTS TO THE ZONING**  
**ORDINANCE, LAND SUBDIVISION ORDINANCE**  
**AND DESIGN STANDARDS REGARDING THE**  
**REQUIREMENT TO OBTAIN APPROVAL OF A**  
**DRAINAGE AND GRADING PLAN PRIOR TO**  
**GRADING OR DISTURBANCE OF LAND**  
**BY CHANGING THE LAND SIZE THRESHOLD**  
**AT WHICH AN APPROVED PLAN IS REQUIRED**  
**FROM TWO ACRES TO ONE ACRE.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 30, 2003

Members present: Krieser, Taylor, Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn.

Staff recommendation: Approval.

These applications were removed from the Consent Agenda at the request of Chair Schwinn.

Ex Parte Communications Disclosed: None.

Nicole Fleck-Tooze of Public Works and Utilities appeared to answer any questions. Schwinn referred to page 24 of the agenda, §26.31.040, the penalty provision. He has been at meetings where sediment in the roadway has been discussed. He inquired as to an actual definition of what the city means when it says, "any person responsible for sediment". Fleck-Tooze explained that typically the city would consider the property owner to be the responsible person. Where the city is investigating a situation where roads are under sedimentation in public right-of-way, it is addressed first by going back to the owner of the property.

She also explained that “tracking” is being added because there are other circumstances besides rainwater runoff where sediment gets onto the street. The city has an obligation to address it no matter how it gets there, before it gets into the storm drain. The proposed amendments reflect how the city is doing enforcement today. For example, the sediment could come off the wheels of the truck instead of via rainwater.

**CHANGE OF ZONE NO. 3405**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 30, 2003

Steward moved approval, seconded by Carlson and carried 9-0: Krieser, Taylor, Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn voting ‘yes’.

**MISCELLANEOUS NO. 03002**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 30, 2003

Steward moved approval, seconded by Newman and carried 9-0: Krieser, Taylor, Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn voting ‘yes’.

**MISCELLANEOUS NO. 03003**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 30, 2003

Steward moved approval, seconded by Krieser and carried 9-0: Krieser, Taylor, Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn voting ‘yes’.

**SPECIAL PERMIT NO. 2009**

**FOR A GARDEN CENTER**

**ON PROPERTY GENERALLY LOCATED**

**AT S.W. 69<sup>TH</sup> STREET & WEST “O” WEST.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 30, 2003

Members present: Krieser, Taylor, Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn.

Staff recommendation: Conditional Approval.

This application was removed from the Consent Agenda due to a letter received in opposition.

Ex Parte Communications Disclosed: Duvall advised that he received a fax communication from the Emerald SID in opposition.

Mike DeKalb of Planning staff submitted the letter from SID #6, in Emerald, dated April 29, 2003, with concerns about protecting their water source; they have problems with nitrates; they are concerned about potential chemicals used and stored in the area; they are in search of new water supply and, in the meantime, request that this application be denied. DeKalb also submitted a written request from the applicant's representative requesting a two-deferral to resolve the issues with the SID.

Duvall moved to defer two weeks, with continued public hearing and administrative action on May 14, 2003, seconded by Krieser and carried 9-0: Krieser, Taylor, Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn voting 'yes'.

There was no public testimony.

**SPECIAL PERMIT NO. 622F**  
**THE VILLAS AT LAKESIDE COMMUNITY UNIT PLAN**  
**ON PROPERTY GENERALLY LOCATED**  
**AT LAKESIDE DRIVE AND WEST LAKESHORE DRIVE.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION**

April 30, 2003

Members present: Krieser, Taylor, Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn.

Staff recommendation: Conditional Approval.

Ex Parte Communications Disclosed: None

Proponents

**1. Gus Ponstingl of Ross Engineering** testified on behalf of Lakeside Partners, L.L.C. This is a previously approved community unit plan, with 13 apartment buildings. Due to market conditions, the developer has decided to amend the previously approved CUP and change 5 of the 13 apartment buildings to townhome units. They have designed a private roadway with 54 various sized townhome units. A small access has been added to the southeast corner, with a cul-de-sac to the north. Ponstingl then discussed the waivers being requested. In order to meet a June 1st deadline, they have requested a waiver to proceed without the submittal of a preliminary plat and to allow the Director of Planning to administratively approve the final plat based on the community unit plan, and with a private roadway. The developer is requesting a waiver of stormwater detention because this waiver was approved in the previously approved community unit plan and the storm sewer is now built. They are also requesting to exceed the maximum number of dwelling units on a dead-end street with 42 units on Lakeside Drive. Ponstingl stated that the developer has worked closely with Planning staff to meet all of the requirements.

Schwinn asked the applicant to discuss the noise mitigation issue with the proximity to I-80. Ponstingl stated that they believe they have mitigated the noise impact from I-80. The interstate comes along the west side of the property. Most of the units are essentially blocked by the on-ramp to the interstate. The issue with noise comes into effect towards the north side of the property and they have proposed to increase the berm sizes. Most of the units have driveways and garages facing the interstate so the outdoor spaces of the units are away from the interstate.

Ponstingl was not aware of any remaining questions with the Airport Authority regarding the noise abatement.

### Opposition

**1. Glenn Johnson, General Manager of the Lower Platte South NRD**, testified in opposition. After reviewing the revised site plan, the District is concerned about the potential impacts of increasing the stormwater runoff and potential quality impacts upon the discharge area from the site, which would be in the I-80 roadway ditch, which is a Category I saline wetlands. The NRD is aware that the waiver of stormwater detention was granted on the larger site; however, changes have occurred since that time in that the Salt Creek Tiger Beetle and Saltwort have been listed on the endangered species list. The District has had experience in owning, operating, managing and restoring some of the saline wetlands in the Lincoln community, and they have learned the importance of the hydrology on maintaining the salinity of that wetland. The saline wetlands are very rare and we don't know all the answers about how they are developed and managed, but we know the balance of hydrology is important. The NRD is concerned about the additional water if there is no detention. The change in land use will increase the amount of stormwater runoff coming into the area and flooding those saline wetlands. Changing the land to urban residential changes the character of the runoff and potential contaminants. Johnson suggested that the previous stormwater detention waiver not be automatically extended to this site due to those changed circumstances. The NRD recommends that stormwater retention to improve the quality of the discharge and reduce the runoff peaks to pre-development levels should be considered as appropriate for this site. The retention would store some of the water for a period of time to allow some of the contamination to remain on site before being discharged, and would improve both the quality and reduce the quantity impacts.

Steward asked whether the applicant has presented a hydrology study to the NRD. Johnson indicated that they had not. This has all come to the NRD just in the last few days. Steward confirmed then that the NRD's objection is not based on either a NRD engineering study or one done by the applicant. Johnson concurred.

Bills-Strand is confused because she believes this amendment equates to less density. Aren't they improving the situation? Johnson suggested that irrespective of whether it is 130 or 100

units, the change from existing to urban is the issue—it's the change in the land use and the increased runoff from that change in land use. Steward believes it is the extra amount of paving and footprint construction, which changes the permeability of the land. Schwinn added that the endangered species that may exist there were not yet listed as endangered in the previous approval.

**2. Cindy Veys**, Environmental Section Manager of the Project Development Division of the **Nebraska Department of Roads**(NDOR) 1500 Hwy 2, expressed concerns on behalf of the NDOR. In 1998, the NDOR received a request from Ross Engineering on behalf of the developer to issue a permit for use of I-80 right-of-way to drain post-development stormwater flows. The permit was denied at that time to safeguard the saline wetlands. Furthermore, NDOR required that in no case should the post-development flows onto the drainage ditch exceed pre-development flows. The calculated runoff from full buildout is approximately two times greater than pre-development. A copy of the permit denial was submitted for the record.

Veys went on to state that for the past three years, the NDOR has been in the process of preparing an Environmental Assessment to obtain clearance to build two more lanes on I-80. The NDOR has spent countless hours in meetings and negotiation activities with Game and Parks, Army Corps of Engineers, DEQ and U.S. Fish and Wildlife in an effort to avoid and minimize impacts from this NDOR project to the endangered species and wetlands. The NDOR has taken extreme measures through the saline wetlands in the NDOR right-of-way along Capitol Beach, including building the new lanes to the inside with concrete Jersey Barrier medians to minimize encroachment into the area; redesigning the drainage collection system to route additional runoff from the new paved surface away from the saline wetlands, perpetuating the existing drainage; designing a stop-log structure in cooperation with Game and Parks to reduce headcutting of the drainage way and improve the hydrology for the habitat, as well as designing a maximum erosion control system of three layers of silt fence along with contractor work restrictions to keep disturbance to a minimum. The NDOR has not yet received approval from Fish and Wildlife for the project, in part because of their concern for pollution that may enter the right-of-way drainage from the road and the development that discharges to the right-of-way ditch. The development is already impacted by noise from the existing interstate system and with the additional two lanes, the noise will increase. The NDOR does not intend to build a noise abatement wall for this development due to the concern for the saline wetland. A 16' high noise wall on an earthen berm would have to be constructed within the NDOR right-of-way, which could affect the wetlands and cause damage to the wetlands and endangered species.

Veys stated that the NDOR requests that the Planning Commission require strict drainage control from this proposed development to protect the saline wetlands and endangered species in the NDOR right-of-way NDOR will not permit the use of the right-of-way for drainage beyond pre-development discharge levels.

**3. Julie Godberson, Environmental Analyst for the Nebraska Game and Parks Commission**, testified that her specialty is threatened and endangered species in Nebraska. The Game and Parks Commission supports the NRD and its request that the waiver not be reinstated for the stormwater detention requirements and that the landowner or developer maintain the retention of the stormwater on his property and not allow it to go back into the drainage along I-80. According to the Endangered Species Act, this area is critical to reintroduction of the Salt Creek Tiger Beetle. The saline wetland itself is a critically endangered habitat within Lincoln and Nebraska. They are endemic to the Lincoln area and are important to the heritage of the City. We do know that the last time we were able to collect species in that drainage was 1998, which is somewhat about the same time drainage was allowed. Game and Parks is concerned that at some point in time the developer was able to have input into the system and it may have caused some loss of species within the system. Godberson acknowledged that at the time the developer received that waiver, the Salt Creek Tiger Beetle was not listed as endangered; however, it is now listed under the state statutes. The Game and Parks Commission is requesting that a consultation under Section 7b be required by the landowner to re-evaluate the situation.

#### Staff Comments

Dennis Bartels of Public Works and Utilities stated that he just recently became aware of the concerns of these agencies and, based on their testimony, the Public Works Department would like to withdraw its recommendation that the detention be waived. The detention requirement was in fact waived with the original approval, which is often based on the effects on downstream property, and at that point in time Public Works was not aware of any objection to waiving that requirement. As far as water quality concerns, there are no specific ordinance requirements as far as providing water quality improvements. He believes that requirement could be added for the new portion of this development, but it would not be something that is typically required under our current ordinance and design standards.

Bartels suggested that the developer be required to retain a two-year design flow to a minimum of 24-hour release period which would catch a lot of the smaller storms which is typically the rainfall that causes the most pollutants to discharge. This would apply only to the new portion of the development. Bartels also advised that a lot of the water that is discharged into the interstate ditch comes from other property outside of this development. Bartels further commented with regard to the impervious area (rooftops, driveways, roadways) for the townhomes – the impervious area will not be reduced by building townhomes instead of apartments.

Bills-Strand wondered whether the developer could proceed with the previously approved plan. Bartels replied that, from the city's standpoint, if the developer decided to build the apartments as previously approved, he does not need anything more than building permits in accordance with the previously approved plan.

Steward asked Bartels whether, based upon a townhome concept, it would be his judgment that to create the detention we're hoping for would dramatically alter the footprint distribution on the property. Bartels believes it would make minor changes to the footprint. There are a few open areas. A relatively small area is being redeveloped. He would suggest channeling all the water from the new development to a detention area and then discharge it to some existing drainage ditches that go through this site. A condition for the retention of the stormwater quality and retention of the water is going to take up more space so it may affect the number of units and they would have to reconfigure the plan to create the space needed.

Greg Czaplewski of Planning staff submitted revised recommended conditions of approval based upon the testimony of the NRD, NDOR and Game and Parks, which denies the request to waive the stormwater detention requirements and amends Conditions #1.1.12 and #1.1.13 accordingly.

#### Response by the Applicant

**Ron Ross of Ross Engineering** gave rebuttal testimony on behalf of the developer, stating that it was at 12:15 p.m. today when he was informed of the objections by the NDOR, NRD and Game and Parks Commission. As of this morning, the developer thought all of the details had been agreed upon because they had worked very closely with city staff to get to this point. Craig Bauer acquired this property with his partners from the bankruptcy court. There were storm sewers that were extended by the previous developer, part of which has been built. The first storm sewer outlets way down north beyond this property into the 100-yr. floodplain and eventually into the wetlands. It does drain a portion of the phase one apartments, which have already been built. It drains further to the east of Lakeside Drive, which has been discharging eventually into the state right-of-way for quite some time. Last Thursday, Ross conferred with the NDOR for the first time about this concern. He understood they were going to organize a meeting. Part of the reason the developer was interested is the noise control. There are five units with back patios adjacent to the interstate and the developer was asking to build an earthen berm on the NDOR right-of-way. He also understands the reason they are sensitive and do not want the earthen berm in their right-of-way. Although this may not now occur as of last Thursday, this developer had proposed to raise the elevation of his berm within his own property just to lessen the noise impact of five of the dwelling units. In fact, the developer was responsible for instigating this discussion with the NDOR about noise control. The developer would still like to do some noise control and will build the higher berm on their own property.



Ross informed the Commission that back when this project was started, there was a permit requested to extend some storm sewer and low flow liner into state right-of-way to provide some protection and the developer was told that this would not be allowed. The waiver of detention requirements was requested years ago when the apartments were approved. If you go out there today, there is no erosion coming from the apartment ground. Phase 1 is built. Phase 2 is under construction with building permits for three apartment buildings. Due to the market study, the partners decided to do something different than apartments as other developers across the street to the east have done. The original 290 apartments were approved; now the proposal is for 208 apartments and 54 townhouses. The developer has asked for the same waiver of detention as previously approved. This was discussed with staff and detention was waived due to the proximity of this project and the relationship downstream of Oak Creek. In addition, the east right-of-way of the interstate acts as its own detention. The proposed townhouse area is 7.4 acres.

Ross pointed out that the developer could come in and build the apartments as previously approved, but that is not what he wants to do. The storm sewers have been built for phases 1 and 2, and half of phase 3. That storm sewer outlets into a sedimentation basin and, because of the sensitivity of this issue, the developer has made a larger detention area. The revised conditions of approval submitted by staff today require the developer to add detention for the townhouses. Ross believes they can probably add detention but it may cause loss of a unit and tearing up some storm sewer that has already been built. Ross requested a meeting with NDOR and requests that the detention be put within the state's right-of-way. This development cannot detain the water coming from the south and east. Now this developer is being required to go to a next level of water quality; however, the city does not have current design standards for this evaluation.

Ross believes there are some things that can be done to help rectify the problem. The developer wishes to continue on with this project. He is not sure they can accept a mandate to provide detention for the 100-year storm and add another character of water quality until they have an opportunity to investigate it. However, the developer does not want the project stymied today. He is willing to work with staff. Ross requested that the Planning Commission at least acknowledge that the detention was waived previously. Phase 1 has been built; they are building phase 2; they can build phase 3, but they are willing to work with city staff, the NDOR and NRD if there can be some flexibility so that they do not have to reconfigure or change the project. Ross requested that the Planning Commission approve this development and recommend that between now and the City Council meeting, the developer, city staff, and NRD work together to a mutual solution that might allow this development to have detention and another aspect of the water quality.

Ross also pointed out that the 7.4 acres is just a fraction of the amount of water, yet they do not want to be insensitive and would like to work something out.

Steward suggested that today the development can be approved with the new staff recommendations; or it could be approved without the new recommendations; or it could be deferred to give the developer the opportunity to present to this body what the solution might be; or it can be denied. He asked whether the applicant would prefer a denial or approval process. Ross indicated that they are not interested in a denial, but they are interested in moving forward to the City Council and would prefer not to have this be put on pending. He believes they would be scheduled at Council on May 12th, and they would like to continue in that direction. Prior to the public hearing at City Council, Ross believes they would be able to put something together to mutually address the detention and water quality. Ross requested a recommendation from the Planning Commission to the City Council that all sides get together and try to work this out. He believes this can occur.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 30, 2003

Carlson moved to defer for two weeks, seconded by Taylor.

Carlson respects the timetable but the Commission has received new information and the developer and the staff need to work something out.

Schwinn stated that he will vote against deferral because he believes the information is too late getting to the applicant; however, he understands the state's concerns. He thinks we can move forward and get a compromise.

Steward believes at the very least deferral is appropriate. He believes that critical environmental issues have been raised by credible sources. New information comes to all of us all the time and he believes we have to find ways to adjust to it. That is what the engineer, developer and city staff have at stake when they are going through this process. Marvin Krout, Director of Planning, approached the Commission, stating that the applicant is on a very difficult timeframe. This is a very unusual situation and if this application does not get to the City Council by May 19th, we are running a risk of not giving any opportunity to have building permits issued before the June 1st deadline. The applicant's agent has indicated that they would prefer the Planning Commission follow the staff's recommendation for the retention so that this case can go forward and those meetings can take place over the next few weeks. This is a limited issue that Krout believes can be worked out and he suggested the applicant be given the opportunity to do that.

Steward inquired as to the consequence of missing June 1<sup>st</sup>. Krout believes it will result in the applicant having to pay an additional \$100,000 due to impact fees.

Ross reiterated that he believes they can resolve the issue prior to the City Council hearing. This developer is not trying to ignore or step around it. There were different situations with the previously approved project.

Carlson withdrew the motion to defer and Taylor withdrew his second to the motion.

Carlson moved for conditional approval, with revised conditions as presented by staff today, seconded by Newman.

Steward moved to amend to add a condition that the stormwater conditions be resolved to the satisfaction of the State Roads Department, NRD and Game and Parks Commission prior to advancement of this application to the City Council, seconded by Carlson.

Rick Peo of the City Law Department cautioned the Commission that some of the requirements of limiting advancement until agreements have been reached are meaningless because the applicant can appeal that condition. Peo would recommend the Commission approve the revised staff recommendation.

Motion to amend carried 6-3: Krieser, Taylor, Carlson, Duvall, Newman and Steward voting 'yes'; Larson, Bills-Strand and Schwinn voting 'no'.

Main motion to approve the revised staff recommendation of conditional approval, as amended, carried 9-0: Krieser, Taylor, Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn voting 'yes'.

**SPECIAL PERMIT NO. 2005**

**BETTY'S HAVEN COMMUNITY UNIT PLAN,**

**ON PROPERTY GENERALLY LOCATED**

**AT S. CODDINGTON AND WEST SOUTH STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 30, 2003

Members present: Krieser, Taylor, Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn.

Staff recommendation: Conditional Approval.

Ex Parte Communications Disclosed: None

Becky Horner of Planning staff submitted additional information for the record, including a request for two-week deferral by the applicant and the President of the West A Neighborhood Association, eight letters in opposition and additional information gathered from the Lincoln Police Department with respect to accidents at the intersection of Coddington and South.

Bills-Strand moved to defer two weeks, with continued public hearing and administrative action scheduled for May 14, 2003, seconded by Larson and carried 9-0: Krieser, Taylor, Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn voting 'yes'.

There was no public testimony in support or in opposition.

**COMPREHENSIVE PLAN CONFORMANCE NO. 03002,**  
**TO REVIEW AN AMENDMENT TO THE NORTH 27TH STREET CORRIDOR**  
**AND ENVIRONS REDEVELOPMENT PLAN,**  
**and**  
**CHANGE OF ZONE NO. 3401**  
**FROM R-6 RESIDENTIAL TO B-3 COMMERCIAL,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT NORTH 27TH AND “P” STREETS.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 30, 2003

Members present: Krieser, Taylor, Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn.

Staff recommendation: A finding of conformance with the Comprehensive Plan on the amendment to the Redevelopment Plan and approval of the Change of Zone.

Ex Parte Communications Disclosed: None

Proponents

**1. Wynn Hjermstad of the City Urban Development Department,** presented the proposal to amend the No. 27<sup>th</sup> Redevelopment Plan and related rezoning request. The No. 27<sup>th</sup> Street Corridor and Environs Redevelopment Plan was previously before the Commission and adopted by the City Council in September of this past year. When we talk about the No. 27<sup>th</sup> Street Redevelopment Plan, we are talking about the general boundaries of “N” Street on the south to Leighton on the north. The proposed amendment is for a project already identified in the Plan, but it is now identified as a much smaller area and there have been changes in this area. The proposal is for what was identified as a small transitional commercial use retail center to be amended to redevelopment of a commercial use and a transitional area between the residential portion of the neighborhood and the No. 27<sup>th</sup> Street Corridor. This amendment identifies the acquisition of the church. The city already owns the parcel on the corner of 27<sup>th</sup> & “P” and the two houses have been torn down. That church has been vacated and has been offered for sale so it opens up an area for redevelopment that wasn’t there previously. This is a tough location for redevelopment. It is right along 27<sup>th</sup>, very close to “O” Street and not a desirable place for residential. Urban Development believes that acquisition of the church and redevelopment of the site provides the city with an opportunity to protect and enhance the residential part of the neighborhood and continue to revitalize North 27<sup>th</sup> Street. With the city ownership it gives the opportunity to provide a buffer and the city gets final design review.

Hjermstad also purported that the change of zone to B-3 is the most logical. The staff is recommending that there be deed restrictions on the use and the Urban Development Department agrees.

Hjermstad also acknowledged that there are definitely some historic issues that need to be addressed with the church. It is eligible for the National Register; however, what the city has heard is that structurally, it is in pretty bad shape. That structural analysis is now in process.

Hjermstad acknowledged that the Urban Development Department has been approached by a potential user for this site. #4 of the Analysis on the change of zone staff report does mention CenterPointe; however, Hjermstad emphasized that this is not a done deal. They will be going through a RFP process.

Schwinn assumed that a church is a permitted use in the B-3 district. Hjermstad replied that the church is owned by the Catholic Diocese and a condition of the sale is that it not be used as a church.

### Opposition

**1. Ed Patterson**, 2108 Q Street, read a letter from the President of **Malone Neighborhood Association** in opposition to the change of zone. It is in the best interest of the neighborhood if the zoning remains residential. There is an interest and need for residential development in this location. It is not that tough to do residential here if you do a mixed-use concept with residential on the upper level. It is well suited for an attractive residential development as a buffer between the business and single family dwellings along P Street, with good access to businesses and public transportation. No entity except CenterPointe has shown an interest in the property. He believes this is a deal cut behind the scenes. Patterson purported that the project is contrary to the Comprehensive Plan, e.g. in order to judge compatibility it is necessary not just to consider what the building might look like, but what activities will take place in the building and what impact they will have in the neighborhood. The activities of a dual-diagnosis (mentally ill/inpatient/out-patient) residential treatment center will ripple through the neighborhoods. Adjacent residential properties will deteriorate and families will move out. People are far more concerned about the actions that take place in the neighborhood and safety of their children than whether the building is new or old. The Comprehensive Plan also provides for consideration that the activities will encroach upon existing neighborhoods. There is no way to screen that encroachment. This does not support the goals of the Antelope Valley project, i.e. activities that would draw middle to upper class individuals to the area to live and play. There is appropriate zoning for this type of function. The residents of Malone Neighborhood do not have the financial resources to resist the temptations of more affluent neighborhoods to push every difficult social problem within Malone's boundaries.

The Catholic church existing on this site is eligible for the Historic Registry and any impact must be completely justified. It is hard to believe anyone could justify modifying or tearing down this site for this treatment center.

Patterson strongly urged that there is no business that would have a more negative impact on this neighborhood than a dual-diagnosis residential treatment center. He has lived in Malone since 1967 and he has seen the impact of Daywatch and Matt Talbott Kitchen moving further and further into the neighborhood. 95% of the clients of these services are people drawn into the neighborhood by the services. Patterson suggested that the assurances by the proponents of this project that the clientele will not be increased is not reality. We deal with life as it exists on the ground.

**2. Mike Morosin**, past president of **Malone Neighborhood Association**, testified in opposition. He deals with many of these clients that go to CenterPointe. The biggest police calls in Lincoln are Daywatch, Matt Talbott and CenterPointe. He has observed drug sales out of the CenterPointe parking lot. Where this is proposed to be located is a walkway to the elementary school. Morosin expressed concerns that the Malone Neighborhood was not brought into the picture before the city began negotiating with CenterPointe. Urban Development did not contact the neighborhood. If you are going to do something like this, isn't it right to come to the neighborhood? Why didn't Urban Development come? Morosin suggested that nobody came because they wanted to do it behind the scenes. The Malone neighborhood is very concerned about the clientele that comes to CenterPointe. They are already on medical prescription drugs and they are self-medicating. Why dump all of this into one neighborhood? Malone has become the collection point for everything else people don't want. We've had enough. Where's the fair share? Why not the old VA hospital? Sure these people need help, but don't bring these type of people into the neighborhood without the resources.

Schwinn reminded Morosin that this hearing is not about CenterPointe, but a change of zone.

**3. Cynthia Blodgett-McDeavitt**, who lives across the street from the building in question, testified in opposition. A business district attracts pedestrian traffic that is not necessarily compatible with a residential area. She needs to know what plans there are to address an increase in transient traffic in an area that already has an increase in transient traffic because of the empty building. Children walk south across P Street at 25<sup>th</sup> and 26<sup>th</sup> Streets, to go to Elliott School. What provisions will there be for these children to walk safely past a new business district? Things were fine when it was a church with a pastor living there, but now it's empty. What impact will this have on her property value and the homes of her neighbors? What about the security of the neighborhood? There have already been two police stakeouts and chases through her property in the last two months. What impact will this rezoning have on increase in crime that is already happening since the church was condemned? She would prefer to have the building remodeled to house offices or maybe an O Street rec center or

some kind of child care. Her husband works in a lockdown unit for teens and she appreciates the need for a place for the people of this project to be, but she would personally prefer that it be located close to Lincoln Action Program. She does not believe a condemned building will ever be sufficiently remodeled to house people who have to live there. Remodeling that building to house a rec center or lawyers offices or consultants offices would be preferable.

With regard to traffic, the corner of 27<sup>th</sup> and P is very difficult. She cannot back out of her driveway on P Street when there is a Husker game or event at Devaney. That corner cannot handle any more traffic. As you consider turning this particular parcel into a business district, please also consider how you will handle the traffic.

#### Response by the Applicant

Carlson asked the applicant to explain the RFP process. Hjermstad stated that Urban Development does a RFP on every single project. And they have done a RFP on every single project on No. 27<sup>th</sup>. In the past, Hjermstad has been to at least one, if not two or three neighborhood associations as well as the business and civic association in that neighborhood before anything is done. A RFP is issued and sent to developers or anyone who has shown an interest. It is also published in the newspaper. The RFP allows about one month for people to submit proposals. There is a selection committee comprised of people that live in the area, businesses in the area and city staff. The committee goes through an interview process and makes a recommendation to the Urban Development director (Urban Development is the city's redevelopment authority). The Urban Development director then makes a recommendation to the Mayor and it is the Mayor that makes the selection. Hjermstad believes that the committee's recommendation has always been followed. Once the developer is selected, there is a development agreement that must be adopted by the City Council.

Newman inquired whether Urban Development has any information as to where the Hartley, Hawley and Woods Park neighborhoods stand on this. Hjermstad's response was that one of the first things Urban Development says to the developer is to go talk to the neighborhood. She believes that Topher Hansen (CenterPointe) did go around and talk to neighborhoods. She understands that Hawley, Hartley, and the No. 27<sup>th</sup> Business and Civic Association support this proposal.

Steward stated that one of the key decision points for him is the historic nature of the building. Are there any funding or other tangential reasons why Urban Development has not delved more deeply into the historic nature and structure nature of the building before proceeding with this proposal. Hjermstad stated that she has been talking with Ed Zimmer. They are doing a structural survey now. The reason they are proceeding with this step in the process is that government is slow. Urban Development does see this as a key location in the neighborhood, whether it remains the structure that it is and rehabbed and reused or whether it has to be torn

down. We see this as a key location to help enhance the residential character. Redevelopment plans are done for the public good. This location is key for a redevelopment or reuse project that is in the public good. It is going to take some time to get through the process. This action does not mean that this is what will be done, but it gives Urban Development the authority to move forward.

Hjermstad clarified that the church building has not been condemned. This Redevelopment Plan is actually the second one. The prior Redevelopment Plan showed those houses for acquisition in 1998, long before the church was for sale. The reason we waited to tear the houses down was because the owner was still living there. Then the reason we wanted to tear them down when we did was because they did not want transients in the houses. Hjermstad indicated that she did talk with the neighborhood before the houses were torn down. Hjermstad also stressed that this is not a “done deal”. In every single case she has gone to the neighborhood. The point today is to amend the Redevelopment Plan and do the rezoning.

Schwinn recalled that the houses were identified as substandard in the blight study.

Greg Czaplewski of Planning staff advised that if the change of zone is approved and CenterPointe is selected as the developer, they would be required to get a special permit for their use.

Carlson clarified that this action does not speak to demolishing the church. We are only talking about acquisition of the property and changing the zone.

**COMPREHENSIVE PLAN CONFORMANCE NO. 03002****ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 30, 2003

Duvall moved a finding of conformance, seconded by Bills-Strand and carried 9-0: Krieser, Taylor, Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn voting ‘yes’.

**CHANGE OF ZONE NO. 3401****ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 30, 2003

Duvall moved approval, seconded by Bills-Strand.

Duvall believes this is really business expanding to the north in a way. He looks at it as an evolutionary view.



Ray Hill of Planning staff explained that the deed restrictions that were discussed have to do with the Comprehensive Plan Conformance item. If the City does sell the land to the developer, the uses should be restricted. The staff recommends that changing the zone conforms with the Comprehensive Plan, and part of that finding is to restrict the uses in the B-3 district.

Steward commented that if they choose not to sell or to sell to another religious organization, it doesn't matter what the Planning Commission has done.

Rick Peo of the City Law Department cautioned that the change of zone is separate and distinct from the Comprehensive Plan conformance. Deed restrictions would only apply if the city acquired ownership of the property with the intent to restrict the use.

Steward is going to vote in favor of the motion, but once again, we have the difficult and sticky situation of a zone condition at the edge of other zone conditions. It's the transition that is most difficult in changing zones within already built and previously used areas. He is troubled by the fact that this comes without all of the answers in regard to the other circumstance which the public has great interest in – historic value. He is also troubled by the opponents' use of the term "social engineering" on one hand and suggesting "social engineering" by not wanting this in their neighborhood. It's all part and parcel of the same issue. This community is responsible not only for the property but for how it gets used and he is prepared to do his best to deal with that to the broadest interest of the community.

Carlson stated that he understands the intention of the two proposals and how they are connected, but he is uncomfortable with the legal reality that the two are not connected. Peo pointed out that the change of zone is being requested by the Urban Development Department. Therefore, once it gets to City Council, it would obviously be placed on pending or deferral until such time as they might acquire ownership. This is not the Catholic Bishop's application.

Schwinn believes B-3 is appropriate on 27<sup>th</sup> and on P Street because of the amount of traffic that goes by there and the intensity of that corner. He has spent some time in this neighborhood because of his vote on Kabredlo's at 23<sup>rd</sup> & R and the depiction of the neighborhood as being a war zone. He has had the pleasure of doing business with two owners on P Street within the last six months and they would not move their businesses if the city wanted to pay them. They are proud of the neighborhood. They have no issues about security. He spent time with his family at Kabredlo's on 23<sup>rd</sup> and R and at 27<sup>th</sup> and he didn't find it any different than any other Kwik Shop in any other part of town. He takes issue with this neighborhood complaining about being dumped on. We are not talking about a major issue in a major problem neighborhood.

Motion for approval carried 9-0: Krieser, Taylor, Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn voting 'yes'.

\*\*\* Break \*\*\* (Schwinn and Duvall left during the break).

**STREET VACATION NO. 03003**  
**TO VACATE X STREET FROM THE**  
**WEST LINE OF NO. 10TH STREET TO THE**  
**WEST LINE OF NO. 11TH STREET.**  
**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 30, 2003

Members present: Krieser, Taylor, Larson, Carlson, Bills-Strand, Newman, and Steward; Schwinn and Duvall absent.

Staff recommendation: A finding that vacating X Street between the east line of 10th Street and the west line of 11th Street conforms with the Comprehensive Plan; and a finding that vacating X Street between the east and west lines of 10th Street does not conform to the Comprehensive Plan.

Ex Parte Communications Disclosed: None

Proponents

1. **Frank Sidles**, the petitioner, and owner of **Capital Contractors**, pointed out that this is a very isolated piece of ground of virtually no value to anyone but Capital Contractors. The city does not want to vacate X Street under the 10<sup>th</sup> Street viaduct but Sidles suggested that Capital Contractors would give the city an easement for use of the street. Sidles also suggested that the people in North Bottoms cannot even see this property. He reiterated the request to have X Street vacated as petitioned. Capital Contractors owns the property up to the point where they are asking that it be vacated. Capital Contractors would grant the city an easement for what the city considers their concern, i.e. for future maintenance and possible reconstruction of the 10<sup>th</sup> Street viaduct. Sidles submitted that the chances of this viaduct ever being removed is, in his opinion, not viable. He believes this is a reasonable request and it will certainly help his business.

Opposition

1. **Becky Schenaman** testified in opposition, stating that she is not against Mr. Sidles and she wants his business to use that property. She just does not want the property given away or sold. We don't know what could happen five years down the road. Will they buy out the property and do something different because of Antelope Valley?

**2. Ed Caudill, President of North Bottoms Neighborhood Association**, 1223 No. 9<sup>th</sup>, testified in opposition, stating that North Bottoms is an area in transition. North Bottoms is in the Antelope Valley redevelopment boundaries. The neighborhood has developed a “Focus Plan” and they have just started working on a project to look at a historic designation for the neighborhood. All of this is survival. The North Bottoms residents want to remain a residential neighborhood. They have no problem with Capital Steel being there. Capital Steel has used this land for more than 70 years, and he believes they will continue to do what they are doing with this land regardless of the vote on this street vacation. Staff is recommending that the ownership of this property be maintained in the city because it is under a right-of-way. The North Bottoms Neighborhood would like to leave it ‘as is’ to work through the Antelope Valley issues. This area is on the Antelope Valley map for commercial development in the future. He also believes that this land at some point could be a target for the University. If there is anything the neighborhood opposes, it is the potential to connect the industrial on the east side to the west side of No. 9<sup>th</sup> Street. By vacating this street, it will allow those two industrial areas to be connected, and the potential is for industry to grow into the neighborhood and the neighborhood would prefer it stay the way it is now. This area is visible from UNL – anybody leaving the football stadium sees this property under the bridge. Caudill suggested that Capital be allowed to continue to use the land as they are, preserve the land for public use and see what happens with Antelope Valley, the Focus Plan and the historic designation.

**3. Randy Stramel**, 4330 Sumner Street, is a member of the Citizens Committee for Antelope Valley, a member of the subcommittee for the neighborhood redevelopment project and, until 6 months ago, was a resident of North Bottoms who is now acting as liaison between North Bottoms and the Antelope Valley redevelopment process. Stramel received a copy of Mr. Sidles’ letter to the Commission dated April 28<sup>th</sup>, and he believes most of the points have been discussed. Public Works states that the reason they do not want to vacate the street underneath the bridge is for maintenance, repair and reconstruction potential of the bridge, not because the railroad may disappear. This has happened at K and L, but that is all industrial property and there is no residential property within hundreds of yards of that area. In this case there is residential property within ½ block. The reference to two railroad easements may be true, and there are two rail spurs there, but in terms of the actual easements he has not seen any evidence one way or the other. In terms of the small building on the west side of the bypass, it is his understanding that that is the control building for the snow melting mechanism for the pedestrian overpass which, again, to his knowledge, did not work from the beginning. He is not sure it is necessary that that building stay there. There is room between that building and the property line for pedestrians or a bike trail. Nobody has any objection to Capital Steel continuing to use the property. He sees no reason why they cannot continue to use it the way they have without actual ownership of the X Street right-of-way. The Antelope Valley redevelopment plan talks about connectivity to eliminate dead-ends and enlighten possibilities for redevelopment. Eliminating public right-of-way is going in the opposite direction.

**4. Roger Figard of Public Works and Utilities** pointed out that this hearing has been focused on the vacation and surplus of X Street east/west. However, if this vacation is approved, it severs the north/south right-of-way for 10<sup>th</sup> Street. There will probably always be a railroad and a bridge, but there will always be a need for a north/south roadway transportation corridor, and he does not believe it is in the best interests of the community to give away public property rights and then try to preserve them back with easements. The discussion has been focusing on vacating X east/west, but Figard urged the Commission to think about the city's north/south 10<sup>th</sup> Street corridor. This vacation severs it and takes away city rights and places further encroachment on the city in the future when the city will have to do work in that area. The city was there first. The city owns the right-of-way and will need it for the future. Figard stated that he would defer to the neighborhood with respect to the east portion. However, he urged that this would set a horrible precedent in the actual vacation of real road right-of-way on a major transportation corridor north and south. He also believes the railroad was there first and the city has tried to preserve the rights. This is different and distinct from granting new ownership rights to a business with the city having easements.

Response by the Applicant

Sidles submitted that the Antelope Valley project is not going to impact this area being discussed. Capital Contractors already purchased a piece of property on the east side of the 10<sup>th</sup> Street viaduct from the University. All of the Capital Contractors property is zoned I Industrial, so it is a commercial piece of property. Sidles stated that Capital Contractors would agree to the vacation of the right-of-way from the east line of 10<sup>th</sup> Street, rather than from the west line. The city gets their right-of-way under the bridge and Capital Contractors will proceed on. The request was to vacate X Street from the west line of 10<sup>th</sup> to the point down to the west line of 11<sup>th</sup> Street. But Sidles would now agree to vacate it from the east side of 10<sup>th</sup> Street which leaves the right-of-way for the city under 10<sup>th</sup> Street. This would be in accordance with the staff's recommendation, and Sidles stated that he would accept this.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 30, 2003

Larson moved approval of staff recommendation, seconded by Bills-Strand.

Carlson stated that he will not support the motion because at the last meeting it was stated that Capital already has the right to move materials on that railroad right-of-way and when asked whether denial would impact their business, they said it would not. If that's the case, and it is not going to impact them one way or the other, he thinks it makes sense for the city to retain ownership. He does not believe it will negatively impact Capital Contractors' business. The property value is basically nothing so the tax dollars that would be gained are pretty much nothing. It makes sense for the city to retain ownership and let Mr. Sidles continue to use it.

Newman stated that she will also vote against this motion. She does not want this to be another unfortunate situation like occurred at Sunken Gardens.

Steward stated that he will also oppose the motion. He believes that there is too much public interest planning occurring in and around this area and this property. The neighborhood's interests are up in the air; the Antelope Valley project is not resolved; it just seems to not be in the best interest of the public to be giving the land away. The tax roll issue is not an argument from his point of view.

Motion for approval of the staff recommendation failed 1-6: Larson voting 'yes'; Krieser, Taylor, Carlson, Bills-Strand, Newman and Steward voting 'no'; Duvall and Schwinn absent.

Carlson moved to find the street vacation to not be in conformance with the Comprehensive Plan and that it be denied, seconded by Newman and carried 6-1: Krieser, Taylor, Carlson, Bills-Strand, Newman and Steward voting 'yes'; Larson voting 'no'; Duvall and Schwinn absent.

**COUNTY SPECIAL PERMIT NO. 198**

**and**

**COUNTY PRELIMINARY PLAT NO. 03000,**

**WYNDAM PLACE, ON PROPERTY GENERALLY**

**LOCATED AT NO. 176<sup>TH</sup> STREET AND HOLDREGE STREET.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 30, 2003

Members present: Krieser, Taylor, Larson, Carlson, Bills-Strand, Newman, and Steward; Schwinn and Duvall absent.

Staff recommendation: Two-week deferral.

Ex Parte Communications Disclosed: None

The staff had previously submitted a written request for two-week deferral for sufficient opportunity to review the revised site plan and revise the staff report and conditions of approval.

Bills-Strand moved to defer two weeks, with continued public hearing and administrative action scheduled for May 14, 2003, seconded by Taylor and carried 7-0: Krieser, Taylor, Larson, Carlson, Bills-Strand, Newman and Steward voting 'yes'; Duvall and Schwinn absent.

There was no testimony in support or in opposition.

**OTHER BUSINESS NO ON THE AGENDA**

April 30, 2003

Members present: Krieser, Taylor, Larson, Carlson, Bills-Strand, Newman, and Steward; Schwinn and Duvall absent.

Ray Hill of the Planning Department submitted a letter notice dated April 24, 2003, which has been distributed to the Mayor, City Council, County Board and the Planning Department's list of developers, attorneys, architects, etc. This is a new process that has been begun to help streamline the review time on preliminary plats that are associated with a community unit plan. There is a provision in the zoning and subdivision ordinances that allows for coordination of a community unit plan and a preliminary plat. That process allows the City Council to waive the subdivision requirements in their approval of a community unit plan. If the preliminary plat process is requested to be waived, it eliminates the 30 day review by the Planning Director and will also allow for the Planning Director to approve all final plats administratively rather than bringing them back to the Planning Commission. The Planning staff believes that this will save considerable time for the developer and the city will get the same review and results. The final plats are always on consent and there is very little discussion on final plats. This does not change any of the ordinances and will help streamline the process for a preliminary plat that is associated with a community unit plan.

At the same time, Hill advised that the staff is asking the developers, consultants and engineers to improve the quality of their product submitted so that there is not a long laundry list of conditions of approval.

In response to questions raised by Steward, Hill advised that the information on a community unit plan and a preliminary plat submittal are almost identical. Everything required in a subdivision will need to be complied with in the community unit plan. This cannot be applied to preliminary plats that are not associated with a community unit plan because that would require state legislation changes.

There being no further business, the meeting was adjourned at 3:45 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on May 14, 2003.